Previous references.

190

(Sep: Rev.)

File No. 32 of 1902-03
Serial Nos. 1—2

Later references.

Sep: Rev. 61 of 03-04

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-2

Part B. for

SUBJECT.

Appeal to the Chief Court against the acquittal of Dt Magte of Sh in ogga of one accused of illicit distillation of arrack, & the Government Advocate to prefer the appeal.

Sl 1: From the Excise Commr in Mysore. No 7440/512 D 9.6.03.

Submits copy of correspondence and solicits that under Sec. 417 of the Code of Criminal Procedure, the Govt Advocate may be directed to present an appeal to the Chief Court against the order of acquittal passed by the Dt Magte of Shimoga.

Sl 2. To the Excise Commr & the Govt Advocate. G.O. 744-45 D 27.6.03

G. R. S. 58 States, that Govt consider the above to be a fit case for an appeal and directs the Govt Advocate to prefer an appeal

Sep. Rev. 7- no 32 of 1902-03.

OFFICE OF THE DEWAN OF MYSORE,
(REVENUE AND GENERAL DEPARTMENTS).

(Full Office Note.)

---

‡ 1. No. and date of latest letter or paper.
2. Catch words to show nature of subject.
3. Subject to be in red and body of note in black ink.

‡ **Subject.** Excise Commissioner no. 7440 of 5/12 dy to 4 June 1903.

Solicited that the Govt. advocate may be directed to prefer an appeal to the Chief Court as under Sec. 417 of the Code of Criminal Pro. against an order of acquittal passed by the Dist. Magistrate of Shimoga

* **Note.** One Lambani named Jigamya aged about 55 years was accused of an offence of illicit distillation under Sec. 55 of the Excise Regulation V of 1901, and convicted by the Hy. Asst. Comr. & 2nd Class Magte of Shimoga upon his own admission under section 243 of the Code of Criminal Procedure and was sentenced to undergo rigorous imprisonment for a period of 2 months. Against this conviction

1. Statement of case in narrative form in regular sequence of subject matter or date.
2. Opinions to be stated only as supported by precedents, or general rules which should always be quoted.
3. Serial numbers in file, &c., to be always stated.
4. Dates of important documents referred should be given.
5. Write on both sides, leaving the same side as margin.

the accused (respondent) appealed to the High Court of Zanzibar on the following grounds:-

(1) The sentence given by the Magistrate was too severe

(2) The Hon. Assessor ought not to have treated the case himself seeing that his own testimony was the head of the dispute which the case related.

(3) The accused being (in the custody of the Court) of him who investigated & conducted the case was against his will under the influence of drink at the time of the examination.

(4) That under such influence the accused appellant did not know or was at least not able to know what he deposed before the (2nd class) Magistrate

Wm J. Shokkamma

Wm B. Shamamma

(5) the nature of the alleged admission by the accused in his old age (60) clearly showed that the appellant was, against his will, under the influence of a drink & as such was not able to comprehend the effect of such alleged admission under the then circumstances of the case and

(6) the judgment of the Lower Court was against law & against the interest of justice —

— The Hon'ble Judge in his judgment quite rightly remarked that the prosecution adopted by the Judge (Mr. Anto Comm & 2nd Class Judge) is open to objection & directed that the immediate release of the prisoner who had already undergone 3 weeks' out of 2 months'

imprisonment, the only
ground held favourable
to the accused being that
the Complainant was not
examined & the evidence for
the prosecution was not
taken down
- Against the above order
of acquittal passed by the
District Magistr the State Govt
wants to prefer an appeal
to the Chief Court and
solicits that the Govt.
Advocate may be asked
to take action in the matter.
The Govt. Advocate who
has already been consulted
by the State Govt is of
opinion that this is a
very good case for
preferring an appeal
as the Conviction by the
2nd class
Hy Sessions Court & Imprisonment
is legal under Sec 243 of

the Code of Criminal Procedure,
Ruled for orders to Secty
16/6/03

Agree
15/6/03.

The reversal seems to be incorrect and the Govt Advocate has given his opinion. But a substantial part of the sentence has been undergone. I am doubtful if the filing of an appeal is necessary. H
17/6/3

The Diwan
through the 2nd
Councillor

Ex. 179
18-6-03.

19/6/3 This seems to be a fit case for an appeal. I would ask the Govt Advocate to prefer one accordingly. The fact that a substantial portion of the sentence has already been undergone ought not in my opinion to make any difference in a case of this kind. A
19/6/03

10960
19.6.03

Issue order
accordingly
20/6

20.VI.03

23/6/03

Agreed
Ku
24/6/03

Agree
24.6.03

6

Vide Contd. * Govt: Advocate's
No. 91 of 30/10/03.

An appeal was accordingly
preferred & the Chief Court
per decide the 2nd to Master's
order of acquittal & restored
the conviction of the lady
accused Convict Master. A copy
of this proforma is sent by the
Govt: Advocate.

+ A draft proforma this is sent
for ~~approval or orders~~

Encls Mr Hain
5/11/3

1

true
3/11/03

* vide S.R. 61 of 03-04 Sl i

+ Sl 2 of S.R. 61 of 03-04.

To the Dewan
through the 2nd. Councillor.

Seen - The order drafted may
be "Recorded" may go.

5-11-03.

13854
6.11.03

Sep: Rev: 32 of 1902-03

Excise Commissioner's Office

No. 7440/572 Bangalore, dated 9th June 1903.

From

P. N. Purnaya Esquire B.A;
Excise Commissioner
in Mysore

To

A. V. Kanjundayya Esquire M.A. B.L;
Secretary to the Government of Mysore
General & Revenue Departments

Sir,

In submitting herewith copy of the marginally noted correspondence together with its enclosures, I have the honor to solicit that under section 417 of the Code of Criminal Procedure, the Government Advocate may be directed to present an appeal to the Chief Court against the order of acquittal passed by the District Magistrate of Shemoga.

I have the honor to be
Sir,
your most obedient servant
Excise Commissioner
in Mysore

1. Letter No. 7192/2363 dated 25th May 1903, to the Government Advocate.
2. Letter No. 2441, dated 9th June 1903 from ditto — ditto —

Ex 549 d 11/6/03

OFFICE OF THE
Regn. 13300
11 JUN 1903
DIVISION

1902-1903

From

P. N. Krishnayya Esquire B.A.
Excise Commissioner
in Mysore

To

H. V. Nanjundayya Esquire B.A. B.L.
Secretary to the Government of Mysore
General & Revenue Department

Dated 9th
Despatched 10th } June 1903.
Received

General No. 7440
No. 572

Enclosure No. 1 file

Subject

Submits copy of correspondence and solicits that under section 417 of the Code of Criminal Procedure, the Government Advocate may be directed to present an appeal to the Chief Court against the order of acquittal passed by the District Magistrate of Shemoga.

Ex in
11. 6 03

Filed with a note, a copy of the Ex. Regn & a copy of the Cert. Copy Code

True Copy

Encls to S. No 1,
Excise Commissioner's Office 2

No. 7192
2363 Rec'd 2

Dated Bangalore 25th/26th May 1903.

From,

The Excise Commissioner,
in Mysore

To,

The Government Advocate.
in Mysore

In forwarding the accompanying copies of judgments of the District Magistrate of Shimoga and Treasury Assistant Commissioner and 2nd class Magistrate, Shimoga, in a case of illicit distillation, together with a copy of the accused's Statement, I have the honor to request your opinion as to whether there are good grounds for preferring an appeal against the District Magistrates order of acquittal. This being a

3

a summons case, the 2nd class Magistrate rightly followed the procedure laid down in Section 243 of the Code of Criminal Procedure and convicted the accused on his own admission.

2. I beg that the copies of the judgments and accused's statement may be returned when no longer required.

(Signed) S. Venkatakrishnayya
for Excise Commissioner

From,
B. Ramaswamy Iyer
Government Advocate
in Mysore.

To,
The Excise Commissioner
in Mysore.

Dated 9th June 1903.

No. 241

Sir,

In reply to your letter No.

No 7192/2363 dated 25th/26th May 1903, I have the honor to state that it is a fit case to prefer an appeal against the order of acquittal

It being a summons case the conviction by the Magistrate under Section 243 of the Criminal Procedure Code on admission of truth of accusation, is legal The District Magistrate erred that the complainant and the witnesses for the prosecution should be examined

The enclosures are herewith returned.

I have &c

(Sd) S. Ramaswamy Aiyar

Government Advocate

"Copy"

[illegible]

Excise Commissioner

[illegible] in Inspector

Sess: Rev. 32 of 1902-03
Sl no 2.

Read:- Letter no 7460/512 dt 8/6/1903 from the Sessions Court in Mysore submitting the case of Venkanna & Correspondence preceding Criminal Case no 121 of 1902-03 on the file of the Fourth Asst Sessions Court & 2nd Class Magistrate of Srirangapatna in which a Lambani named Jagappa was accused of illicit distillation of arrack and policeman (Head Constable) may be directed to prosecute appeal to the Chief Court against

6

the order of acquittal
passed by the trial
Court of Sessions

Order Sheet

No 744-45
Ex
dt 27/6/03.

Cruelties

Govt. Counsel -
~~the~~ this to be
a fit case for
an appeal and
under sec. 417 of the
Cr. P. Code ~~and~~
direct the Govt.
Advocate to prefer
one accordingly

Sd/-
26/6/3

Secy

To the Govt Counsel in support of the Govt. Appeal
the Govt Advocate in support